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**SUBSTITUTE HOUSE BILL 1699**

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**State of Washington**                      **59th Legislature**                      **2005 Regular Session**

**By** House Committee on Judiciary (originally sponsored by  
Representatives Lantz, Priest and Tom)

READ FIRST TIME 02/21/05.

1            AN ACT Relating to agreements for the purchase and sale of real  
2 estate; amending RCW 64.04.005; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 64.04.005 and 1991 c 210 s 1 are each amended to read  
5 as follows:

6            (1)((~~a~~)) A provision in a written agreement for the purchase and  
7 sale of real estate which provides for liquidated damages or the  
8 forfeiture of an earnest money deposit to the seller as the seller's  
9 sole and exclusive remedy if ((~~the purchaser~~)) a party fails, without  
10 legal excuse, to complete the purchase, is valid and enforceable,  
11 regardless of whether the ((~~seller~~)) other party incurs any actual  
12 damages(~~(, PROVIDED That:~~

13            ~~(i) The total earnest money deposit to be forfeited does not exceed~~  
14 ~~five percent of the purchase price; and~~

15            ~~(ii) The agreement includes an express provision in substantially~~  
16 ~~the following form: "In the event the purchaser fails, without legal~~  
17 ~~excuse, to complete the purchase of the property, the earnest money~~  
18 ~~deposit made by the purchaser shall be forfeited to the seller as the~~  
19 ~~sole and exclusive remedy available to the seller for such failure."~~

1 ~~(b) If the real estate which is the subject of the agreement is~~  
2 ~~being purchased by the purchaser primarily for the purchaser's~~  
3 ~~personal, family, or household purposes, then the agreement provision~~  
4 ~~required by (a)(ii) of this subsection must be:~~

5 ~~(i) In typeface no smaller than other text provisions of the~~  
6 ~~agreement; and~~

7 ~~(ii) Must be separately initialed or signed by the purchaser and~~  
8 ~~seller.~~

9 ~~(2) If an agreement for the purchase and sale of real estate does~~  
10 ~~not satisfy the requirements of subsection (1) of this section, then~~  
11 ~~the seller shall have all rights and remedies otherwise available at~~  
12 ~~law or in equity as a result of the failure of the purchaser, without~~  
13 ~~legal excuse, to complete the purchase.~~

14 ~~(3) Nothing in subsection (1) of this section shall affect or limit~~  
15 ~~the rights of any party to an agreement for the purchase and sale of~~  
16 ~~real estate with respect to:~~

17 ~~(a) Any cause of action arising from any other breach or default by~~  
18 ~~either party under the agreement; or~~

19 ~~(b) The recovery of attorneys' fees in any action commenced with~~  
20 ~~respect to the agreement, if the agreement so provides.~~

21 ~~(4))~~. However, the amount of liquidated damages or amount of  
22 earnest money to be forfeited under this subsection may not exceed five  
23 percent of the purchase price.

24 (2) For purposes of this section((7)):

25 (a) "Earnest money deposit" means any deposit, deposits, payment,  
26 or payments of a part of the purchase price for the property, made in  
27 the form of cash, check, promissory note, or other things of value for  
28 the purpose of binding the purchaser to the agreement and identified in  
29 the agreement as an earnest money deposit, and does not include other  
30 deposits or payments made by the purchaser; and

31 (b) "Liquidated damages" means an amount agreed by the parties as  
32 the amount of damages to be recovered for a breach of the agreement by  
33 the other and identified in the agreement as liquidated damages, and  
34 does not include other deposits or payments made by the purchaser.

35 (3) This section does not prohibit, or supersede the common law  
36 with respect to, liquidated damages or earnest money forfeiture  
37 provisions in excess of five percent of the purchase price. A

1 liquidated damages or earnest money forfeiture provision not meeting  
2 the requirements of subsection (1) or (2) of this section shall be  
3 interpreted and enforced without regard to this statute.

4 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
5 preservation of the public peace, health, or safety, or support of the  
6 state government and its existing public institutions, and takes effect  
7 immediately.

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